

- DECISION -

Claimant:
SHERRIE L SALMON

Decision No.: 3025-BR-04

Date: October 13, 2004

Appeal No.: 0417012

S.S. No.:

Employer:
DEPT OF HEALTH

L.O. No.: 64

Appellant: Employer

Issue: Whether the claimant is unemployed between academic years or terms, or during a customary vacation period, from an educational institution and has reasonable assurance of returning to work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 909.

- NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to file the appeal can be found in many public libraries, in the Maryland Rules of Procedure, Title 7, Chapter 200.

The period for filing an appeal expires: November 12, 2004

REVIEW ON THE RECORD

The claimant was employed as a part-time health aide during the 2003-2004 school term. In June 2004, the claimant and the employer signed an agreement (dated May 12, 2004) for the claimant to return to work for the upcoming school year. *Employer's Exhibit 1*. The claimant admits that she believed that she would return to work on or about August 30, 2004 and in fact was planning to report to work at the beginning of the 2004-2005 school year.

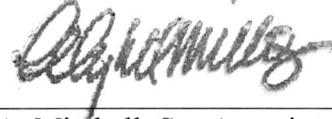
Although the agreement contained a clause that provides that the agreement is void in the absence of funding, the agreement merely states the obvious. The Board takes official and judicial notice that all governmental positions are subject to funding. There is evidence that the claimant's position was indeed funded. *Employer's Exhibit 2*. The claimant had no reasonable basis upon which to believe that her job was not going to be funded for the subsequent academic year. Therefore, the Board finds that based on a preponderance of the credible evidence in the record, the claimant had reasonable assurance that she would return to work in the subsequent academic year within the meaning of Section 8-909.

The decision of the hearing examiner shall be reversed.

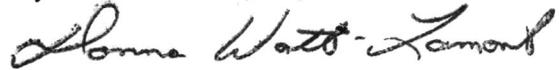
DECISION

The claimant had a reasonable assurance of working in an instructional capacity at the beginning of the next following academic term, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 909(a)(2) of the law. She is disqualified from the receipt of benefits based on service performed for the employer from June 27, 2004 through the week ending August 28, 2004.

The decision of the Hearing Examiner is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

Copies mailed to:

SHERRIE L. SALMON

DEPT OF HEALTH

DONNA HENRY

DEBRA FISCHER

Michael Taylor, Agency Representative

UNEMPLOYMENT INSURANCE APPEALS DECISION

SHERRIE L SALMON

SSN #

Claimant

vs.

DEPT OF HEALTH

Employer/Agency

Before the:

**Maryland Department of Labor,
Licensing and Regulation**

Division of Appeals

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 767-2421

Appeal Number: 0417012

Appellant: Claimant

Local Office: 64 / BALTOMETRO

CALL CENTER

August 16, 2004

For the Claimant: PRESENT

For the Employer: PRESENT, DONNA HENRY, ISAAC OKORONKWO

For the Agency:

ISSUE (S)

Whether the claimant is unemployed between academic years or terms, or during a customary vacation period, from an educational institution and has reasonable assurance of returning to work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 909.

FINDINGS OF FACT

The Baltimore City Health Department, employer, provides services to children in Baltimore City schools. For the 2003 – 2004 school term, the claimant worked at Poly High School as a part-time health aide worker earning \$14,319 annually.

The claimant's last day worked was June 30, 2004. In June 2004, the claimant signed an agreement with her employer to return to work for the upcoming school term. However, this agreement provides that in the event that there is insufficient funds, the contract is void. The employer had not notified the claimant that there were sufficient funds available. The parties took opposing views as to whether there is reasonable assurance for the claimant's continued employment.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-909(c) provides:

- (1) With respect to services performed for an educational institution in any capacity other than instructional, research or principal administrative, benefits may not be paid on the basis of the service for any week of unemployment that begins during a period between 2 successive academic years or terms.
- (2) This subsection applies to any individual who:
 - (i) performs the services described in this subsection in the first of 2 academic years or terms; and
 - (ii) has reasonable assurance that the individual will perform the services in the second of the 2 successive academic years or terms.

To meet the "reasonable assurance" standard, an employer need not demonstrate that an employee is guaranteed the job in the next academic semester. Rather, the employer must establish that the employee has a reasonable expectation of being recalled to perform the same or similar services.

EVALUATION OF EVIDENCE

The employer bears the burden of establishing, by a preponderance of the evidence, that the claimant has reasonable assurance of continued employment for the upcoming school year.

The Hearing Examiner is obligated to conduct a full, fair and impartial hearing, evaluating the evidence presented and assessing credibility of witnesses.

Although the claimant is not an employee for the Baltimore City Public Schools, the credible evidence establishes that work that the claimant performed was on behalf of an educational institution, the Baltimore City School System. Therefore, Section 8-909(c) is applicable. See Wingate v. City of Annapolis, 14-BH-91.

Although Section 8-909 is applicable in this case, the employer has not established that the claimant has reasonable assurance of returning to work for the upcoming school year. The claimant was not given sufficient notice that there were sufficient funds available for her for the upcoming school year. (Employer Exhibit #1) Therefore, the employer has not met their burden. The claimant is eligible for unemployment insurance benefits provided she is in compliance with other provisions of the law.

DECISION

IT IS HELD THAT the claimant did not have reasonable assurance of returning to the same or similar employment with an educational institution in the next academic year within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-909. The claimant is not precluded from receiving benefits under Section 8-909, from the week beginning June 27, 2004, provided that the claimant meets the other eligibility requirements of the Maryland Unemployment Insurance Law. The claimant may contact claimant Information Service concerning the other eligibility requirements of the Maryland Unemployment Insurance Law. The claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at ui@dllr.state.md.us or call 410-949-0022 from the Baltimore region, or 1-800-827-4839 from outside the Baltimore area. Deaf claimants with TTY may contact Client Information

Service at 410-767-2727, or outside the Baltimore area at 1-800-827-4400.

The determination of the Claims Specialist is reversed.

C Edmonds, Esq.
Hearing Examiner

Notice of Right to Request Waiver of Overpayment

The Department of Labor, Licensing and Regulation may seek recovery of any overpayment received by the Claimant. Pursuant to Section 8-809 of the Labor and Employment Article of the Annotated Code of Maryland, and Code of Maryland Regulations 09.32.07.01 through 09.32.07.09, the Claimant has a right to request a waiver of recovery of this overpayment. This request may be made by contacting Overpayment Recoveries Unit at 410-949-0022 or 1-800-827-4839. If this request is made, the Claimant is entitled to a hearing on this issue.

A request for waiver of recovery of overpayment does not act as an appeal of this decision.

Notice of Right of Further Appeal

Any party may request a further appeal either in person, by facsimile or by mail with the Board of Appeals. Under COMAR 09.32.06.01A(1) appeals may not be filed by e-mail. Your appeal must be filed by August 31, 2004. You may file your request for further appeal in person at or by mail to the following address:

Board of Appeals
1100 North Eutaw Street
Room 515
Baltimore, Maryland 21201
Fax 410-767-2787

NOTE: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: August 09, 2004

DA/Specialist ID: RBA7Y

Seq No: 002

Copies mailed on August 16, 2004 to:

SHERRIE L. SALMON

DEPT OF HEALTH

LOCAL OFFICE #64

DONNA HENRY

DEPT OF HEALTH